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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5470/2015

SHAKUNTALA RANA & ANR

..... Petitioners

Through Mr. Harsh Sharma and Ms. Deepika,
Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION & ANR

..... Respondents

Through Mr. Ajjay Arora and Mr. Kapil Dutta,
Advs. for NDMC.
Mr. Peeyush Kalra, ASC with Ms.
Paridhi Dixit, Adv for R-2.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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31.08.2016

1 This petition has been preferred by the legal representatives of deceased Gaurav Rana. Gaurav Rana had died along with his dog in the MCD park at Vaishalikunj, Pitampura, Delhi on 18.01.2015. The incident had occurred at 11.00 p.m. He died because of electrocution. He was cremated on the following day. FIR No.63/2015 was registered at police station Maurya Enclave under Sections 304A/429 of the IPC on the same date. The post mortem of the deceased revealed that he had died as a result of electrocution.

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These facts are not in dispute.

2 The writ petitioners have sought compensation for the death of the victim; it is stated that he was a practising lawyer in the courts of Delhi. He had interned with various senior lawyers and had a high level profile; had he been given a chance he would have earned several laurels. On the unfortunate day i.e. on 18.01.2015 he left his house at 10.45 p.m. and his daily routine was to look after street dogs who roamed around in the neighbourhood. He however did not come home on time as a result of which his family members got worried. They proceeded to look for him and on hearing cries of human being coming from the park and on reaching there, they saw that there was no light in the park; it was dark; a man and a dog were lying on the ground. There was no sign of movement in them. On scrutiny it was revealed that the victim had died; his pet dog lying near him was also dead. The victim had died by electrocution. Further averments in the writ petition disclose that this park was being maintained by the North Delhi Municipal Corporation through its Horticulture Wing. It was their responsibility to maintain this

park. Electrical poles and lamp posts were installed within this park. The respondent corporation was highly negligent in not looking after the park in a proper manner as a result of which the electric poles were not functioning and there was no light in the park; there was no insulation in most of the electrical poles. The connections were not properly insulated. This had led to the electrocution of the victim.

3 Learned counsel for the petitioner submits that the family of the victim should accordingly be compensated. A sum of Rs.6,03,00,000/- crores has been computed as the compensation fee and the tabulation has been mentioned on page 41 of the paper book. Learned counsel for the petitioner on this count submits that the salary of the petitioner was about Rs.50,000/- per month and given the multiplier of 17 the annual income would have been Rs.6,00,000/-. Even if half of the sum is deducted towards expenses the balance when multiplied by the multiplier of 17 (as per the schedule II of the Motor Vehicle Act), the family members of the victim would be entitled to a sum of Rs.6,03,10,000/-. Learned counsel for the petitioner has placed reliance upon the following judgments:

- i. (1983) 4 SCC Rudul Shah Vs. State of Bihar

- ii. (1993) 2 SCC 746 Nilabati Behera Vs. State of Orrisa
- iii. (2003) Shobha Vs. GNCTD
- iv. (2004) All India Lawyers' Union (Delhi Unit) Vs. Union of India and B.L.Wali Vs. Union of India
- v. (2005) 8 AD (Delhi) 533 Delhi Jal Board Vs. Raj Kumar
- vi. (2005) 1 AD (Delhi) 29 Chitra Chary Vs. DDA
- vii. AIR 2009 JK 29 Mustaq Ahmed Vs. State of J & K.

Submission is that the writ petition in these circumstances is wholly maintainable. In Mustaq Ahmed (supra) it was held that even in a case of electrocution the writ Courts had ample authority to grant compensation.

4 Counter affidavit has been filed by the respondents. They have disputed the contention raised by the petitioners. It is stated that disputed questions of fact have arisen. This petition is not maintainable. It is denied that the victim had died because of negligence on the part of the statutory bodies. It is stated that a team of engineers comprising of the Executive Engineer (Electrical), Zonal Engineer (Electrical) and Junior Engineer (Electrical) had in fact inspected the site. On inspection it was noted that there was a

total 18 numbers of 4.5 metre long GI pipes/poles installed therein. There were 2x18 Watt Post-Top Lantern fittings mounted on each pole. Some of the covers of Pole fuse boxes were missing but the cable was properly insulated and there was no leakage of current. The CC footings/foundations of 17 poles out of 18 existing poles were found intact whereas the CC footing of the pole at which the accident had occurred was broken and removed. Normally, two cable-protection GI pipes are provided, one for incoming and another for the outgoing but in this case one GI pipe of the incoming cable was missing along with a piece of cable including earth wire after dismantling and removal of CC footing from the site, although the pole Fuse Box of the said pole was intact. A technical report submitted by the aforementioned body has been placed on record. Contention in the counter affidavit being that these cables and pipes were tampered with and they had been removed. Inquiry from the persons available at the site revealed that drug addicts often visited the park and were seen around in the area and this theft/foul act was due to the acts of those kind of miscreants which was the direct cause

of this unfortunate incident. No negligence can be attributed to the respondent. It is further submitted that there was in fact a negligence on the part of the deceased as he had brought his dog into the park where the entry of dogs is banned as per the policy (policy has been placed on record). The victim had admittedly gone to the park along with his pet dog; this was against the policy of the park. All these matters require evidence. Learned counsel for the respondent in the course of arguments has drawn attention of this Court to the inquiry report as also the technical report. The inquiry report has also been heavily relied upon by the petitioner to advance his argument. Submission of the petitioner is that the inquiry report of the Department clearly shows that 17 poles out of existing 18 poles were intact but the CC footing of the pole at the place of incident was broken and removed. Normally there are two cable protection GI pipes, but one was found missing in the instant case. This act is clearly attributable to the Corporation as it was their Horticulture Wing who had to ensure that all the poles were intact. Per contra learned counsel for the respondent has relied upon the same Inquiry

Report to substantiate his submission that this Inquiry Report had stated that all the cables were insulated; neither any joint nor any connection was kept between the cable end box and TPDDL feeding point so the question of current leakage could not arise; this electrocution might have been caused due to a leakage of current when the piece of cable and GI pipe were removed/stolen. Certain other portions of this report have been highlighted wherein it has been noted that when pet dog of the victim had gone to sniff/urinate, it was in this process of saving his dog from the electrocution, the deceased also came in contact with the wire and got electrocuted. Another point highlighted by the Department in the technical report and inquiry report is that the GI Pipe and earthing were intact at the site till 17.01.2015. Learned counsel for the respondent has also drawn attention of this Court to the technical report which has been submitted by the Department. This technical report was prepared by the Executive Engineer (Electrical) and Assistant Engineer (Electrical) of the Rohini Zone. They had also made a local inquiry

whether the tendency of drug addicts of the area to steal and tamper with the objects in the park including electrical fittings exists and this has not been ruled out. The possibility that the deceased was walking in the park with his dog who was urinating/sniffing near the pole which got an electric shock; in order to save the dog, the victim had also suffered electrocution, can also not be ruled out; this was noted to be a matter of theft.

5 Arguments have been heard and record has been perused.

6 The facts as narrated above clearly show that there are questions of fact which have to be gone into. It is not possible for the writ court to decide the same. The submission of the petitioner that it was the responsibility of the Competent Authority to manage the park is not disputed. It is also not disputed that the victim has died because of electrocution. The disputed facts which as per this Court require evidence would be to the effect as to whether it was because of the negligence of the statutory bodies that the electrocution of the victim had taken place as the Inquiry Report and Technical Reports suggest that the insulation of wires was intact till 17.01.2015. This incident is

dated 18.10.2015. The reports both had noted that the statements of on lookers in the area disclosed that miscreants/drug addicts often used to visit the park and there was a possibility of theft of cable with the GI pipes leaving one pole broken (where the incident had occurred); thus it could not be ruled out.

7 In this context the observations of the Apex Court in AIR 2005 SC 3971 SDO Grid Corporation of Orissa Ltd. and Ors. Vs. Timudu Oram who had relied upon certain observations of an earlier Bench of that Court and were extracted with approval and read herein as under:

“ In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wired of the electric transmission lines of the appellants, that “admittedly/prima facie amounted to negligence on the part of the appellants”. The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to appellant I had snapped and the deceased had come in contact with

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it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wire had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed question of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the Civil Court as it was done in OJC No.52229 of 1995.”

8 A similar view had also been taken by the Apex Court in 1999(9) SCC 21 W.B.Electricity Board and Ors. Vs. Sachin Banerjee.

The observation in that case would also be relevant to the context of this case. In that case also , the Apex Court had held that the writ court cannot prima facie conclude that the statutory body (the State

Electricity Board) was guilty of negligence although the victim had died because of electrocution and the allegation therein was that it was because of the illegal hooking for the purpose of theft of electricity. These observations are quoted herein as under:

“The only grievance of the petitioners relates to an observation in the impugned judgment that two victims had died because of the negligence of the petitioner-State Electricity Board. Looking to the fact that the two victims were electrocuted because of an illegal hooking for the purpose of theft of electricity, the petitioners cannot be held guilty of negligence although they may have stated that there is a need for conducting dehooking raids more frequently.”

9 In the instant case also this Court is of the view that since disputed question fact has arisen a petition under Article 226 of the Constitution may not be the right forum to answer these queries. Whether the unfortunate incident had occurred because of the sole negligence attributable to the respondent Corporation or not is a finding of fact which can be returned only if the parties are relegated to evidence. The pole where the accident had occurred (which as per the Inquiry Report and the Technical Report was intact till 17.01.2015) had broken whether because of the fault of the statutory

body or whether because of the intervention in the park of drug addicts, it was a case of theft or a foul act by a miscreant which was the direct nexus of the accident; whether dog who was not permitted in park (as per the policy) had suffered an electrocution and in order to save the dog, the victim also received an electric shock are all matters which would require evidence.

10 A writ petition in appropriate circumstances seeking compensation for death of victims is maintainable. There is no quarrel on this proposition. However, it is the factual matrix of each case which would determine the maintainability of that writ petition. This writ petition is dismissed with liberty granted to the petitioners to seek remedy by way of a suit, if the suit is filed within an outer limit of three months from today, the respondent will not take an objection on the ground of limitation.

11 Petition disposed of in the above terms.

INDERMEET KAUR, J

AUGUST 31, 2016/ndn

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